

### **REMARKS/ARGUMENTS**

Applicants would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office Action, and amended as necessary to more clearly and particularly describe the subject matter that Applicants regard as the invention.

Review of the subject application in view of the present amendment/remarks is respectfully requested.

#### ***Drawings***

Claims 2-4 are canceled and thus the objection to the drawings is no longer applicable.

#### ***Claim Rejections – 35 USC § 112***

Claims 1-5, 7 and 8 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 7 are amended to add clarity in delineating the present invention.

Moreover, it must be noted that claims 5 and 6 were amended to depend only from claim 1 through the preliminary amendment dated March 20, 2006. Therefore, the withdrawal of claim 6 from consideration was improper and claim 6 should have been examined.

#### ***Claim Rejections – 35 USC § 102***

Claims 1, 5, 7 and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0043227 to Carlsson et al. (hereinafter “Carlsson”). For at least the following reasons, the Examiner’s rejection is respectfully traversed.

The Office action contradicts itself because, while admitting that drawings cannot generally be relied upon to teach certain dimensional features, it uses measurements of the

figures using a ruler to calculate volume. MPEP § 2125 states that when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). For example, the court, in *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977), disagreed with the Solicitor's conclusion, reached by a comparison of the relative dimensions of appellant's and *Bauer's* drawing figures, that *Bauer's* clearly points to the use of a chime length of roughly  $\frac{1}{2}$  to 1 inch for a whiskey barrel, because this ignores the fact that *Bauer* does not disclose that his drawings are to scale. Carlsson does not mention that its figures are drawn to scale and thus the Examiner's determination using a ruler has no weight.

Moreover, even if the figures of Carlsson were drawn to scale, because claims 1 and 7 recite limitations relating to volume, additional information, such as the value of the area along the length of the cylinder 15 and transfer ducts 3 and 3', must also be provided in Carlsson to accurately determine the ratio of the volumes. Unless such information is provided, it is unclear whether and in what manner the area along the length changes in Carlsson. Therefore, the Examiner's assertion that volumes can be determined using a ruler and the limitation is thereby anticipated is speculation at best.

Because each and every limitation of claims 1 and 7 is not disclosed, the rejection was improper and must be withdrawn.

#### ***Claim Rejections – 35 USC § 103***

Claims 2-4 were rejected under 35 U.S.C. 103(a) as being unpatentable in over Carlsson as applied to claim 1 and in further view of U.S. Patent Application Publication to Galligan et al. The rejection is rendered moot because claims 2-4 are canceled.

In light of the foregoing, it is respectfully submitted that the present application is in condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. ABE1-39938.

Respectfully submitted,  
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